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JAN 14, 1978

Mr. E. D. Crowley, Acting Director
Arizona Department of Economic Security
1717 West Jefferson
Phoenix, Arizona 85007

Re: 78- 33 (R77-370)

Dear Mr. Crowley:

This letter is in response to your November 17, 1977, letter to this office in which you asked for our opinion concerning whether the State Department of Economic Security ("DES") is entitled to collect post-judgment interest under A.R.S. §44-1201.A¹ on judgments it obtains against recipients of overpayments of unemployment insurance benefits. For the reasons discussed hereafter, we conclude that DES is not entitled to collect that interest.

Subsection C of A.R.S. §23-787 provides:

Any amount which a claimant is liable to repay to the commission [Employment Security Commission, the predecessor to DES] . . . shall be collected without interest by civil action in the name of the commission.

1. A.R.S. §44-1201.A provides:

Interest for any legal indebtedness shall be at the rate of six dollars upon one hundred dollars for a year, unless a different rate is contracted for in writing.

Although this direction is included in the section² relating to unemployment insurance overpayments caused by the recipient's fraud, it obviously is all the more applicable to collection under A.R.S. §23-788³ of overpayments which were not caused by the recipient's fraud, since it would be absurd (and hence an incorrect interpretation of the statutes, Salinas v. Kahn, 2 Ariz.App. 181, 187, 407 P.2d 120 (1965) as modified, 2 Ariz.App. 348, 409 P.2d 64 (1965) to treat a non-fraudulent overpayment recipient more harshly

2. A.R.S. §23-787 is entitled "Recovery, recoupment and deduction of benefits obtained by fraud" Subsections A and B of this section provide:

A. Any person, who by reason of his fraud has received any amount as benefits under this chapter to which he was not entitled, shall be liable, in the discretion of the commission, to repay such amount to the commission for the fund.

B. If the existence of fraud by any person, resulting in receipt of benefits to which he was not entitled, has been found by a court of competent jurisdiction or in an initial claims determination proceeding, such person shall be liable to repay such amount to the commission for the fund or to have such sum deducted from any future benefits payable to him under this chapter.

3. A.R.S. §23-788 pertains to collection from recipients of unemployment insurance benefits wrongfully paid without fault on the part of the recipients. It provides:

Any person who has received, without fault on his part, any amount as benefits under this chapter to which he was not entitled, shall be liable in the discretion of the commission either to repay such amount to the commission for the fund, or to have such sum deducted from future benefits payable to him under this chapter, except that such repayment or deduction shall not be required if recoupment would either defeat the purpose of this chapter or would be against equity and good conscience. As amended Laws 1966, Ch. 107, §4.

than a fraudulent one.⁴

We think that the prohibition against the collection of interest is equally applicable to pre- or post-judgment interest. This conclusion is not inconsistent with A.R.S. §44-1201.A, which only establishes, in the absence of a written agreement otherwise providing, that the rate of interest on a legal indebtedness is 6%. That rate is applicable both to pre-judgment claims (assuming they are liquidated, Costanzo v. Stewart Title and Trust of Phoenix, 23 Ariz.App. 313, 317, 533 P.2d 73 (1975)) and post-judgment claims. Here, however, A.R.S. §23-787.C specifically prohibits the collection of interest, and does not distinguish between pre- and post-judgment interest.⁵ Moreover, this

4. In addition to A.R.S. §§23-787 and 23-788, A.R.S. §23-789 also pertains to collection of unemployment insurance benefit overpayments. It provides:

When any person by reason of nondisclosure or misrepresentation by him or by another of a material fact, irrespective of whether such nondisclosure or misrepresentation was known or fraudulent, receives any amount as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled or while he was disqualified from receiving benefits, he shall be liable, in the discretion of the commission, either to have such sum deducted from any future benefits payable to him under this chapter or to repay to the commission for the fund an amount equal to the amount so received by him. The amount shall be collectible in the manner provided for the collection of past due contributions.

We are not sure what situations, if any, it covers which are not already covered by A.R.S. §§23-787 or 23-788. While it specifies that the overpayment "shall be collectible in the manner provided for the collection of past due contributions" (covered in A.R.S. §§23-736 et seq., which require the collection of interest), we do not think it was meant to override the specific direction of A.R.S. §23-787.C that no interest shall be collected.

5. Indeed, A.R.S. §23-787.B specifically covers the post-judgment situation by the reference to a judicial finding of a fraud induced overpayment.

Mr. E. D. Crowley

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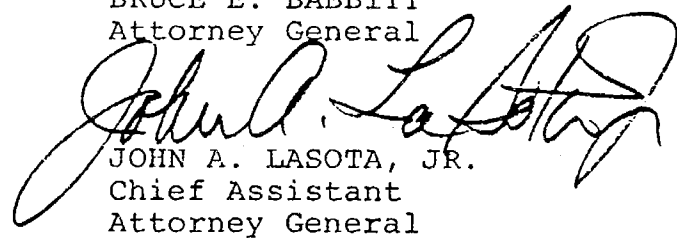
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specific statute must be given controlling weight over the more general statute, A.R.S. §44-1201.A.⁶ In re Gilbert's Estate, 73 Ariz. 261, 264, 240 P.2d 534 (1952).

As a result, DES may not collect pre- or post-judgment interest on unemployment insurance benefit overpayments.⁷

Sincerely yours,

BRUCE E. BABBITT
Attorney General



JOHN A. LASOTA, JR.
Chief Assistant
Attorney General

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6. Our opinion is not altered by A.R.S. §12-347, which is a general provision similar to A.R.S. §44-1201.A. A.R.S. §12-347 simply requires the clerk to include interest in the judgment from the date of the verdict. For the reasons previously set forth, A.R.S. §23-787.C must take precedence.

7. Our conclusion also is supported by the lenient legislative policy expressed in A.R.S. §§23-787 through 23-789, which actually gives DES the power to waive the collection of overpayments, even those caused by the recipients' fraud.